UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/22914
9 August 1991

ORIGINAL: ENGLISH

NOTE VERBALE DATED 8 AUGUST 1991 FROM THE PERMANENT REPRESENTATIVE OF GERMANY TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of Germany to the United Nations presents his compliments to the Secretary-General of the United Nations and, with reference to his note SCPC/7/91 (4-1) dated 3 July 1991, has the honour to transmit the enclosed Report by the Federal Government of Germany on the Implementation of the Weapons Embargo against Iraq in accordance with paragraph 4 of Security Council resolution 700 (1991).

Annex

Report by the Federal Government on the implementation of the weapons embargo against Iraq in accordance with paragraph 4 of Security Council resolution 700 (1991)

In accordance with paragraph 4 of resolution 700 (1991) of the United Nations Security Council, all States are enjoined, in conjunction with section 8 of the Guidelines to Facilitate Full International Implementation of paragraphs 24, 25 and 27 of Security Council resolution 687 (1991) to report to the Secretary-General within 45 days on the measures undertaken to fulfil the commitments pursuant to paragraph 24 of Security Council resolution 687 (1991). The Federal Government submits herewith the corresponding report.

The measures called for by paragraph 24 of Security Council resolution 687 (1991) are specified in the Guidelines to Facilitate Full International Implementation of paragraphs 24, 25 and 27 of Security Council resolution 687 (1991) under nrs. 2 and 9. The following should be noted on these points in connection with German statutes on foreign trade and payments.

I. Coverage of the various categories of prohibited items and activities under German statutes on foreign trade and payment (nr. 2 of the Guidelines)

1. Ad nr. 2 a), i)

The group of products is covered by part I of the German export list, in particular by section A thereof and thus requires licensing for export.

Gaps in the list of goods cited under nr. 2 a), i) of the Guidelines are closed by means of the licensing requirement introduced in Section 5 c of the 14th Ordinance amending the Foreign Trade and Payments Ordinance of 11 March 1991. This stipulation means that the exportation of goods and documents for their production requires authorization if they are intended for construction or operation of a facility for exclusive or partial production, modernization, or maintenance of weapons, ammunition, or military equipment within the meaning of part I, section A of the export list or for installation in these items; if the purchaser, country of destination, or country in which the items are to be fitted is a country on the Country List H; and if the exporter is informed of this fact. On the Country List H are those countries which are particularly sensitive in terms of exports; Iraq is on the list.

2. Ad nr. 2 a), II) to IV)

As regards the group of goods cited here, it may be assumed that relevant substances, facilities, and components are fully subject to export licensing in accordance with German external economic law in keeping with the relevant international rules.

3. Ad nr. 2 b)

The extent to which the research, development and production facilities cited under this number are to be covered by the weapons embargo is subject to interpretation. The basic part of this equipment, however, is subject to control by way of the position 0018* cited under part I, section A of the German export list. A large part of the otherwise dual-use goods is subject to controls by way of the just cited new licensing requirement pursuant to section 5 c of the Foreign Trade and Payments Ordinance with the result that compliance with the stipulations of the United Nations embargo is to be expected.

4. Ad nr. 2 c)

In connection with this group of goods, it is to be presumed that the embargo catalogue pursuant to paragraph 24 of Security Council resolution 687 (1991) is enacted in German legislation on foreign trade and payments since the German provisions contain the international catalogue of goods to be controlled.

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* The following is covered under position 0018 of the German export list:

Facilities, parts of facilities, equipment and technology for the production of goods cited in part I, section A of this list as follows and the software particularly developed for such purposes:

(a) Production facilities specially designed or reoutfitted for the manufacture of the goods covered under part I, section A of this list as well as specially designed components for such facilities;

(b) Specially designed environment inspection facilities for testing the licensing and suitability of the goods covered under part I, section A of this list as well as the specially designed equipment for such facilities;

(c) Specific production technologies, even if the equipment in which the technologies is used is not covered;

(d) Specific technologies for design, installation of components, operation, maintenance and repair of entire production facilities, even if the components themselves are not covered.

5. Ad nr. 2 d)

The basic technologies of relevance for the embargo are to be found on the German export list, with the result that the exportation of such documents is subject to licensing. In addition, section 45 of the Foreign Trade and Payments Ordinance should be noted: subject to licensing is also the transfer - if not occurring in the form of the exportation of documents - of information, not generally available, on the production of certain sensitive goods and on certain sensitive technologies, technical data, and technical processes as well as the transfer of certain data-processing programs (software), not generally available, to foreigners resident in a country that is not a member of OECD.

6. Ad nr. 2 e)

Sensitive services are controlled in the Federal Republic of Germany on the basis of section 45 b of the Foreign Trade and Payments Ordinance amended by the 14th Ordinance to amend the Foreign Trade and Payments Ordinance of 11 March 1991. Subject to licensing according to the new version are services provided by residents and non-resident Germans, that are related to goods from part I, section A of the export list (weapons, ammunition and military equipment) if they are provided in a country that is not a member of OECD. Subject to licensing are further those services by residents and non-resident Germans related to rockets, components specially designed for such rockets, and specially developed computer programs; exceptions are projects of the European Space Organization and services provided in a EEC member State or in Australia, Canada, Japan, New Zealand, Norway, Turkey or in the United States of America.

This particular licensing requirement for services thus applies to Iraq. Services provided in its favour may be controlled in the sensitive areas.

II. Principles for the Application of the Embargo Provisions (nr. 9 of the Guidelines)

1. Ad nr. 9 a)

The prevention of circumvention exports has always been a particular problem for export controls. In addition to the possibility, within the framework of general prevention, to deter illegal exports by heavy penalties, the only other means of preventing such circumvention exports is examination of the final user of the exported product. This control of the final user is provided for in German statutes on foreign trade and payments. Since a similarity of the products to be controlled in all of the United Nations member countries is to be assumed, the present system is basically adequate. As a means to minimize circumvention exports, a restrictive export control policy vis-à-vis certain countries is also worthy of consideration. This particularly means that applications to export sensitive products to these countries are regularly rejected.

2. Ad nr. 9 b)

The German export list, in addition to the already cited part I, section A (weapons, ammunition and military equipment), also has a section C, in which the special dual-use goods are covered. The embargo provisions on these dual-use goods are consequently implemented in German statutes on foreign trade and payments in so far as the respective goods are covered by section C of the export list. Furthermore, there is a control of dual-use products by way of a new statute (section 5 c of the Foreign Trade and Payments Ordinance) that was introduced in March 1991.

3. Ad nr. 9 c)

This number contains guidelines for the exportation of goods and for the transfer of know-how and services. With regard to the exportation of goods, note should be taken of the comments in the previous paragraph. As regards services, mention should again be made here of the already cited section 45 b of the Foreign Trade and Payments Ordinance. With reference to the transfer of know-how, we again call attention to the already cited section 45 of the Foreign Trade and Payments Ordinance with its licensing requirement for the transfer of specific, not generally available, information.

4. Ad nr. 9 d)

German statutes on foreign trade and payments are familiar with final user controls in connection with sensitive products (section 17 of the Foreign Trade and Payments Ordinance), in particular in the form of a control by the exporter. Incidentally, this control is supplemented by a restrictive export control policy towards certain countries and companies for which there are reasons to believe that they might continue to provide Iraq with items subject to the embargo.

5. Ad nr. 9 e)

In relevant cases, compliance with this provision is guaranteed by suitable final user controls.

6. Ad nr. 9 f)

The legal basis underlying this number of the embargo Guidelines may already be found in German statutes on foreign trade and payments. The customs authorities, who are responsible for controlling freight, post and transport, may examine goods intended for export at any time and, if necessary, seize such goods for closer inspection (sections 42, 44 and 46 of the Foreign Trade and Payments Act).

7. Ad nr. 9 g)

The penalties corresponding to this number of the embargo Guidelines are provided for in German statutes on foreign trade and payments. Violations of the sanctions may be punished by administrative fine not to exceed 1 million DM and imprisonment of up to five years. Increasing the prison sentence to up to 15 years is planned within the context of a bill that the Federal Government has presented to the legislature.

III. Publication

The provisions of the Foreign Trade and Payments Ordinance cited above are published and explained in the Federal Gazette (Bundesanzeiger). In addition, the Federal Government maintains constant contact with the associations of German business and industry so as to inform them of the provisions and provide them with assistance in interpreting them.

IV. Conclusion

It may be concluded that German statutes on foreign trade and payments are in line with paragraph 24 of Security Council resolution 687 (1991) in conjunction with the embargo Guidelines. The Federal Government is willing to provide the committee with all of the information it might desire in this connection.